

REMARKS

Claims 1, 10, 13, 22 and 32-33 are examined.

The Examiner rejected Claims 1, 10, 13, 22 and 32-33 under 35 U.S.C. § 103(a) as being unpatentable over Japanese Patent 11-59701 ("Nakagome"), in view of U.S. Patent 6,007,246 ("Kinigakis"). The Examiner first contends:

Nakagome et al. discloses a bag comprising a top end having a seal, a bottom end, first and second side edges on opposite sides of the bag each extending between the top and bottom ends, the first side edge is straight and has a non-gusseted portion located proximate to the top end, forming an acute included angle with the top end at seal (7) and being substantially perpendicular to and longer than the bottom end. A pour spout is located along the non-gusseted portion and oriented substantially parallel to the first side edge to provide access to an opening. However, Nakagome et al. does not show the bottom end having a generally ovoid shape. Kinigakis et al. discloses that it is known in the art of dispensing bags to provide a bottom end that is generally ovoid in shape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bottom end of Nakagome et al. with the ovoid shaped, bottom end of Kinigakis et al., in order to permit the bag to rest in an upright position.

Applicant respectfully submits that the Examiner is mistaken. As seen in each of Nakagome's Figs. 1-5, on the side edge where Nakagome's pour spout is located, Nagagome shows a "notched part 8." (As seen in Figs. 3 and 4, when the tear strip 11 is removed, an unlabeled notched part similar to notched part 8 is formed.) Thus, Applicant respectfully submits that, unless the notched part 8 is removed, Nakagome's disclosed bag does not meet Claim 1's extent and straightness limitations on the first side edge:

... first and second side edges on opposite sides of the reclosable bag, each extending between the top and bottom ends, wherein the first side edge is substantially straight and has a non-

gusseted portion that is proximate located near the top end ...

Thus, Applicant submits that the combined teachings of Nakagome and Kinigakis do not meet all limitations of Applicant's Claim 1. Similarly, the combined teachings of Nakagome and Kinigakis do not meet all limitations of Applicant's Claim 13. Thus, Claims 1 and 13 and their respective dependent Claims 10, 22 and 32-33 are each allowable over the combined teachings of Nakagome and Kinigakis. The Examiner further contends:

Furthermore, Nakagome et al. discloses the claimed device, as discussed above. Nakagome et al. especially discloses the pour spout and opening being initially accessed by a tear strip that is parallel to the first side edge. However, Nakagome et al. does not disclose the opening being reclosable by a reclosable fastener in the pour spout. Kinigakis et al. discloses that it is known in the art to provide a reclosable, zipper fastener in the pour spout of an analogous bag. Kinigakis et al. further discloses the reclosable, zipper fastener being provided such that it is parallel to weakening lines (50) that form a removable tear strip (60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pour spout of Nakagome et al. with a reclosable, zipper fastener that is parallel to the tear strip, as suggested by Kinigakis et al., in order to permit the opening to be reclosed. Providing the pour spout of Nakagome et al. with the reclosable, zipper fastener of Kinigakis et al., as discussed above, meets the recitation "a reclosable fastener provided over a reclosable opening located proximate to the top end, forming an included angle of less than 90 degrees, being closer to the top end than to the bottom end and being substantially vertical when the bag is in the generally upright position".

Applicant respectfully submits that the Examiner is also mistaken in this second argument. Applicant's Claim 1 does not recite a "reclosable fastener ... forming an included angle of less than 90 degrees [with the top end]," as contended by the Examiner. Rather, Applicant's Claim 1 recites: "the first side edge forming an acute included angle with the top end and being substantially perpendicular to and longer than the bottom." Regardless of whether it is the reclosable fastener or the first edge that is the element that meets the top end at an acute

included angle, such a limitation would not be met by the modification of Nakagome by Kinigakis, as suggested by the Examiner. As shown in each of Nakagome's Figs. 1-4, the cutting line A meets the top end at 90 degrees, thus the resulting structure would not form an acute included angle (i.e., less than 90 degrees) recited in Applicant's Claim 1.

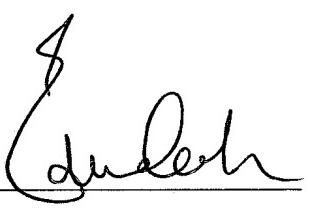
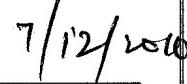
Furthermore, the Examiner's suggested modification of Nakagome's pour spout 6 by providing Kinigakis's reclosable fastener 34, is contrary to the teachings of Nakagome. As announced in its title, and disclosed in its Abstract, Nakagome teaches that its invention constructs a "refilling pouch 60." As known to those of ordinary skill in the art, a refilling pouch is a single-use bag (i.e., its purpose is to provide its content to refill another container). Thus, one of ordinary skill in the art would not be motivated to carry out the Examiner's suggested modification of providing Kinigakis's reclosable fastener 34 to Nakagome's bag, which is not intended to be reused. Accordingly, Applicant submits that Claims 1, 10, 13, 22 and 32-33 are not rendered obvious by Nakagome and Kinigakis.

In addition, the Examiner's proposed modification of Nakagome's pour spout by Kinigaki's dispensing orifice 24, together with the reclosable structure 34, would necessarily remove Nakagome's "notched part" 8 (otherwise, the extent and straightness limitations on the first side edge, discussed above, would not be met). In his Abstract, Nakagome teaches that his invention seeks to solve the problem of "[making] stable fixation possible to a mouth of a container such as a bottle while making the substance safely and easily transferable to the container." To that end, Nakagome teaches "a notched part 8 for fixing spout 6 to the mouth of part of a container..." The operation of notched part 8 is clearly illustrated, for example, by Nakagome's Fig. 5. Thus, the Examiner's suggested modification would (a) render the resulting structure not satisfactory for its intended purpose (i.e., the resulting structure can no longer fixed

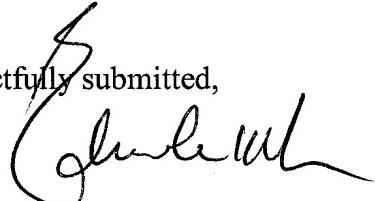
the pour spout to the mouth of a bottle), and (b) change Nakagome's principle of operation (i.e., stably fixing the pour spout "to a mouth of a container while making the substance safely and easily transferable to the container"). MPEP §§ 2143.01(V) and 2143.01(VI) explain that such a modification is neither suggested nor motivated by the prior art and, even when so modified, would not be sufficient to render the claims *prima facie* obvious.

Therefore, Applicant submits that Claims 1 and 13 and their respective dependent Claims 10, 22 and 31-32 are each allowable over the combined teachings of Nakagome and Kinigakis. Reconsideration and allowance of Claims 1, 10, 13, 22 and 32-33 are therefore requested.

For the reasons set forth above, all claims (i.e., Claims 1, 10, 13, 22, and 32-33) are now believed to be in condition for allowance. If the Examiner has any questions regarding the above, the Examiner is requested to call Applicant's attorney at 408-660-4149.

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